IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2007

Coram

The Honourable Mr. Justice K.N.BASHA

Crl.O.P.No.2472 of 2007

M.Jeevanandham .. Petitioner

-Vs.-

1. Balaji
2. Siva
3. Prakasam
4. Thandalam Mohan
5. Murugan
6. Vijayan
7. Radha .. Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to give suitable directions to the Chief Judicial Magistrate, Chengalpattu, to take on file C.C.No. /2006 dt.04.12.2006 preferred by the petitioner against the respondents and deal with them in accordance with law.

For Petitioner : Mr. V.Padmanabhan, Senior Counsel, for M/s. Sundar and Santhosh.

For Respondents : Mr. P.Kumaresan, Addl. Public Prosecutor

O R D E R

Mr. V.Padmanabhan, learned senior counsel appearing for the petitioner submitted that the petitioner has come forward with this petition seeking the relief of giving suitable directions to the Learned Chief Judicial Magistrate, Chengalpet, to take the complaint preferred by the petitioner, dated 04.12.2006, on file and to deal with the complaint in accordance with law.

2. Learned senior counsel for the petitioner vehemently contended that the petitioner is the complainant in a private complaint case preferred before the Learned Chief Judicial Magistrate, Chengalpet, for the alleged offences under Sections 149, 166, 167, 294(b), 323, 342, 352, 355, 465, 471, 506(i) read with 34 of the Indian Penal Code against seven (7) persons and all of them are Police Officials, namely, the Sub-Inspector of Police, Writer and Constables for the alleged ill-treatment

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and other tortures caused to the petitioner herein. Learned senior counsel for the petitioner contended that on the presentation of the complaint the learned Chief Judicial Magistrate, Chengalpet simply returned the complaint by making certain endorsement to the effect that the complaint against the accused reveals violation of Human Rights and therefore, the petitioner has to approach the Human Rights Court under Section 30 of the Human Rights Act 1993 and making further endorsement to the effect that the petitioner/complainant has to obtain sanction under Section 197 of the Criminal Procedure Code.

3. Learned senior counsel for the petitioner contended that the allegations contained in the complaint preferred by the petitioner contains certain definite and specific allegations leveled against the accused persons namely the Police Officials. It is submitted by the learned senior counsel that on a complaint given by one Ashokan, the petitioner, the present complainant in this case, along with his Advocate went to T-14, Mangadu Police Station on 13.11.2006 at about 6.00 pm has summoned by the first accused and it is also submitted by the learned senior counsel that the petitioner was subjected to further torture on 14.11.2006, as all the accused dragged the petitioner/complaint from one end to the other end of the room in the Police Station and also abused him in a filthy language and thereafter, they have also taken photographs and finger prints of the petitioner herein. It is also submitted by the learned senior counsel that there are witnesses to the atrocities caused to the petitioner by the accused persons namely the Police Officials. It is submitted by the learned senior counsel that in view of the above said atrocities, the petitioner constrained to prefer a complaint before the Learned Chief Judicial Magistrate, Chengalpet and accordingly presented the instant complaint before the Learned Chief Judicial Magistrate, Chengalpet making specific and definite allegations constituting the offences alleged against the accused persons in this case.

4. Learned senior counsel further submitted that the Learned Chief Judicial Magistrate without following the procedures contemplated under the Criminal Procedure Code arbitrarily and mechanically returned the complaint with the endorsement that the complainant/petitioner has to approach the Human Rights Court and further he has to obtain sanction under Section 197 of the Criminal Procedure Code in view of the fact that the first accused is the Sub-Inspector of Police.

5. Learned senior counsel vehemently contended that the procedure adopted by the Learned Chief Judicial Magistrate, Chengalpet is unknown to law and the Learned Chief Judicial magistrate, Chengalpet, has ignored and over looked the specific procedures contemplated under Sections 201, 202 and 203 of the Criminal Procedure Code. Learned senior counsel further placed reliance on number of decisions of the Honourable Apex Court as well as this Court. Learned senior counsel also placed strong reliance on a Division Bench decision of this Court in the case of A.Vinayagam Vs. Dr. Subash Chandran reported in 2000(1) Law Weekly (Crl.) 460. It is

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submitted by the learned senior counsel that the Division Bench of this Court has categorically held regarding the duty of the Learned Magistrates while entertaining the private complaints preferred by any citizens. Learned senior counsel also pointed out that the Division Bench of this Court has held that when the Magistrates takes cognizance upon receiving a complaint under clause (a) of Section 200, he acts on the basis of the contents in the complaint and it is open to the Learned Magistrate to examine the complainant and his witnesses, if any, and after such examination, he may postpone, the issuance of process or he may direct the investigation to be made by a Police Officer. Further option available to the Learned Magistrate as per law is that, in the event, if the Learned Magistrate is convinced after the examination of the complainant or his witnesses, he may decide to issue the process and the Learned Magistrate can decide to dismiss the complaint, after such an exercise of examination of the complainant and the witnesses.

6. Learned senior counsel also pointed out by placing reliance on the decision of the Honourable Supreme Court in the case of P.P.Unnikrishnan and another Vs. Puttiyottil Alikutty and another reported in 2001 (1) C.T.C. 239 to the proposition that Section 197(1) of the Criminal Procedure Code does not impose any absolute bar against taking cognizance of any offence but only contemplates sanction of prosecution that if a Police Officer assaults a person inside the locker such Police Officer cannot claim such act to be connected with the discharge of his authority or exercise of his duty, unless he establishes that he had such acts in his defence or in defence of others or any property.

7. Learned senior counsel for the petitioner further contended that the Learned Chief Judicial Magistrate, Chengalpet, has not followed the above said options and procedures contemplated under the Criminal Procedure Code, as laid down by the Division Bench decision of this Court and proceeded to simply return the complaint by above said endorsement. Therefore, in view of the above said circumstances, the learned senior counsel submitted that the petitioner has left with no other alternative remedy except to approach this Court by invoking inherent powers of this Court under Section 482 of the Criminal Procedure Code to give suitable directions to the Learned Chief Judicial Magistrate, Chengalpet.

8. I have carefully considered the submissions made by the learned senior counsel appearing for the petitioner and also perused the complaint copy and the endorsement made by the Learned Chief Judicial Magistrate, Chengalpet, in this case.

9. A perusal of the complaint preferred by the petitioner discloses certain cognizable offences and it is also further seen that the petitioner was subjected to cruelty both by physical and mental torture and is said to have been assaulted by the accused persons, namely, the Police Officials inside the Police Station and further, the perusal of the complaint reveals that the petitioner was summoned by the said Police

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Officials under the guise of enquiring the petitioner in respect of the complaint. The perusal of the complaint also reveals that there are definite and specific allegations levelled by the petitioner against the accused persons, namely, the Police Officials including the Sub-Inspector of Police. It is also seen that the petitioner preferred the private complaint under Section 200 of the Criminal Procedure Code and it is also seen from the complaint that as a matter of fact, the petitioner went to the Police Station on the fateful day of occurrence along with his Advocate and in the presence of Advocate, the petitioner was abused and thereafter the Advocate left the Police Station and after the Advocate left the Police Station, the Police Officials said to have been assaulted and abused the petitioner herein by using filthy language. Therefore, this Court has no hesitation to hold that the allegations contained in the complaint constitutes certain cognizable offences. It is very unfortunate to note that the Learned Chief Judicial Magistrate, Chengalpet, instead of proceeding to consider the complaint preferred by the petitioner/complainant by following the procedures contemplated under Sections 201, 202 and 203 of the Criminal Procedure Code, mechanically and without application of mind returned the complaint with the endorsement to the effect that the petitioner shall approach the Human Rights Court and further the petitioner should obtain sanction under Section 197 of the Criminal Procedure Code, as the first accused happens to be the Sub-Inspector of Police. It is needless to state that at this initial stage and even before examining the complainant namely the petitioner/complainant herein and further examination of any other witnesses produced by the complainant, it is not open to the Learned Judicial Magistrate, Chengalpet to go into the allegations and more particularly it is the duty of the Learned Judicial Magistrate, to decide only after recording the statements to consider whether the allegations levelled against the respondents namely, the Police Officials is showed that the said Police Officials committed such offence during the course of their discharge of official duty or they have committed the offence in their private capacity.

10. As rightly pointed out by the learned senior counsel for the petitioner, the Honourable Supreme Court in the decision reported in 2001 (1) C.T.C. 239 (referred to supra) in paragraph 21 has held as follows:-

> "21. If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 of the Code as well as Section 64(3) of the K.P. Act. But if a police officer assults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his defence or in defence of others or any property".

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Therefore, the above said proposition of law laid down by the Honourable Apex Court makes it crystal clear that it is for the Learned Chief Judicial Magistrate, Chengalpet, only after recording an evidence and only after considering the defence of the concerned Police Officials and thereafter only to decide, whether the offence was committed during the course of discharge of official duty or not. Therefore the learned Chief Judicial Magistrate cannot insist for obtaining sanction under Section 197 of the Criminal Procedure Code at this preliminary and pre-mature stage.

11. It is also pertinent to note that the Division Bench of this Court in the decision reported in 2000 (1) Law Weekly (Crl.) 460 (referred to supra) in paragraphs 14 and 15 has held as follows:-

> "14. The combined reading of Section 2(d) of the Code of Criminal Procedure, which defines "complaint" and Rules 28 and III of the Criminal Rule of practice would suggest that, all that the complainant has to do for lodging a complaint is to present a complaint to the Magistrate. That would pre-suppose that the complaint is filed with proper court-fee, which would be paid along with the complaint. Careful scrutiny of the Criminal Rules of practice as also the Code of Criminal Procedure does not show that anything more is required at this stage to be presented by the complainant or that any documents are also required to be filed along with the complaint. Once a complaint is filed which answers the description in Section 2(d) of the Code of Criminal Procedure along with proper court-fees and copies, there would be no question of doing anything further at that stage. In this behalf, Chapter XV of the Code of Criminal Procedure is extremely telling. It goes without saying, however, that Section 200 of the Code of Criminal Procedure commences with the cognizance taken by the Magistrate. Chapter XV deals with the complaints to the Magistrate and provides for all that the Magistrate has to do after taking the cognizance, that the Magistrate has to do under Section 200(a). When the Magistrate takes cognizance upon receiving a complaint under clause (a) of Section 200, he acts on the basis of the contents in the complaint with a view to proceed in the matter and has the following courses open:-
>
> I. He has to examine the complainant and his witnesses, if any,
>
> II. After such examination, he may post-pone, the issuance of process by inquiring into the case by himself or directing an investigation to be made by a police officer.
>
> III. If the Magistrate is convinced after the examination of the complainant or as the case may be his witnesses, he may decide to issue the process.
>
> IV. He may straight away decide to dismiss the complaint, after such an exercise of examination of the complainant and the witnesses.

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15. Law does not know to provide any other mode of dealing with the complaint, much less returning the complaint. It is not possible for a Magistrate to return the complaint for the so called defects and if the defects are there in the complaint, the complainant has to suffer. There is no warrant in the Criminal Procedure Code or the Criminal Rules of practice, empowering the Magistrate to return the complaint just because he thinks that there are any defects. In this behalf, the observation by both the learned Judges that the Magistrate has a power to return the complaint because he has a power to accept is clearly incorrect. In the first place, the Magistrate does not have a "power" to accept the complainant. That is not the power of the Court. That is the "duty" on the part of the Court in contradistinction to its "powers". Again, unless there is a specific provision in the Code or the rules, the Magistrate cannot find out his own procedure by returning the complaint as it is. In fact, when the complainant presents the case to the Magistrate that is not the stage of examining the defects and it is not he Magistrate to examine the so called defects in the complaint. All that the Magistrate has to do is to consider the same by ordering the examination of complainant and/or as the case may be, his witnesses. It was strenuously suggested that if there are some formal defects like the age is not stated or the name of the father of the accused is not stated, the complainant should get a fair chance to correct the defects. We only observe that it is for the complainant to produce a defectless complaint, if because of such defects, such as non-mentioning of the age and names of father, etc., the identity of the accused person becomes suspicious or is not established properly then, the complainant must suffer for his defective complaint, but, under no circumstances, could the Magistrate return the complaint, particularly after the court-seal has been put on that complaint and the court-fees stamps have been canceled then, as rightly found by Janarthanam, J., the complaint becomes the Court property."

12. The above said legal principles laid down by the Division Bench of this Court and in the decision cited supra are squarely applicable to the instant case, as in this case also, the Learned Chief Judicial Magistrate ought not to have returned the complaint by making certain endorsement without following the procedure contemplated under Sections 201, 202 and 203 of the Criminal Procedure Code. Therefore, this Court is constrained to direct the Learned Chief Judicial Magistrate, Chengalpet, to take the complaint on file and to proceed to deal with the complaint in accordance with law by following the procedures contemplated under Sections 201, 202 and 203 of the Criminal Procedure Code.

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13. With the above directions, the Criminal Original Petition is disposed of.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

srk

To

1. The Chief Judicial Magistrate, Chengalpattu,
2. The Public Prosecutor, High Court of Madras, Chennai.

1 cc To M/S.Sundar & Santhosh, Advocate, SR.13822.

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